

SPECIAL CIVIL APPLICATION NO. 599 OF 1997.

Date of decision: 9.4.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. A.H. Desai, advocate for the petitioners.

Mr. H.M. Bhagat, Senior Counsel for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

April 9, 1997.

Oral judgment:

Rule. Mr. Bhagat, learned Senior Counsel waives service of rule on behalf of the respondents.

Petitioners have been granted quarry lease under Rule 11 of the Gujarat Minor Mineral Rules, 1966 vide orders annexure A collectively dated 28.6.1996. Condition 11 of

the order provides that before execution of lease deed the petitioners have to obtain non-agricultural use permission from the competent authority. The petitioners have challenged this condition contending that the condition is unreasonable, unjust and de hors the provisions of the Gujarat Minor Mineral Rules, 1966.

Heard Mr. Patel learned advocate appearing for Mr. Bhagat, on behalf of the respondents. Mr. Patel has argued that admittedly the land in question is agricultural land and when the use thereof is to be changed then as required under section 66 of the Bombay Land Revenue Code, permission for non-agricultural use must be obtained. Mr. Patel has further submitted that if the agricultural land is to be used for any purpose other than agricultural activities such permission is a must, therefore, to keep up the spirit and object of this Section, the condition has been imposed.

At this stage, without going into the validity and legality of condition 11 of the impugned order dated 28.6.1996, in my view, the controversy can be resolved by directing the respondents to execute lease deed by imposing some conditions on the petitioners. Since the use of land is to be changed it shall be necessary for the petitioners to obtain N.A. permission of course at a later stage and till then shall not be open for the petitioners to carry out any activities upon the land leased. The respondents are directed to execute lease deed as agreed between parties without insisting for compliance of condition No.11, Annexure A dated 28.6.1996 as a condition precedent for execution. The petitioners shall apply for N.A. permission within one week from the date of execution of lease deed and the Collector, on receipt of such application, shall dispose of in accordance with law within two months therefrom. It is hereby made clear that the petitioners shall not be entitled to carry out any activities upon the land in question till the application for N.A. permission is disposed of by the Collector.

Rule is made absolute accordingly with no order as to costs.